

V. J. MALLOY

IBLA 75-536

Decided June 6, 1975

Appeal from a decision of California State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease entry card CA 2786.

Set aside and remanded.

1. Administrative Practice -- Oil and Gas Leases: Generally -- Oil and Gas Leases: Applications -- Regulations: Generally

Where the Bureau of Land Management changes an administrative practice to thereafter refuse to accept unofficial copies of the simultaneous oil and gas lease entry card, by an order dated March 26, 1975, the new practice will be given prospective application only and will not be applied retroactively to simultaneous entry cards filed during the February 1975 simultaneous filing period.

APPEARANCES: V. J. Malloy, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

V. J. Malloy has appealed from the April 15, 1975, decision by the California State Office, Bureau of Land Management, which rejected his simultaneous oil and gas lease entry card CA 2786 because the card was an unauthorized reproduction of the official entry card, Form 3112-1. The subject card was submitted for Parcel #1 in the February 1975 simultaneous filing period. At the drawing to determine priority among the cards filed for Parcel #1, the entry card of Malloy was first drawn.

Appellant contends:

An attempt was made to obtain the form provided by the BLM from the local BLM office. This was on

Friday afternoon before the simultaneous offers were required to be in Sacramento by 10 a.m. Monday morning. In the conversation with the girl on the telephone at the BLM office, it was suggested that if I had any of the cards, that I should reproduce them. This was done on as close to the same material that we could find as the BLM simultaneous cards in my possession.

There was no spurious intention on my part, and I certainly would not have placed a \$10.00 check on something that I did not believe to be proper.

After receiving the rejection letter, I casually queried several landmen and asked them where they got their BLM cards. Several times I was informed that they printed their cards.

Therefore, in this appeal, I should like to pose the question that if others have been duplicating the cards and any leases were granted or issued by reproduced cards, what, then, is their status? Actually, I believe that by past usage of duplicated cards, the requirement for nonreproduced cards has been voided.

Regulation 43 CFR 3112.2-1(a) provides that offers to lease in the simultaneous filing procedures must be on a form approved by the Director [BLM], "Simultaneous Oil and Gas Entry Card" (Form 3112-1, May 1974). Regulation 43 CFR 3111.1-1(a) provides that noncompetitive offers to lease must be on a form approved by the Director, "Offer to Lease and Lease for Oil and Gas," or on unofficial copies of that form in current use, provided that the copies are exact reproductions on one page of both sides of the official form. It is to be noted that the regulations governing simultaneous filings contain no reference to unofficial copies of the entry card.

Instruction Memorandum 75-145 of March 26, 1975, from the Associate Director, BLM, provides:

Subject: Oil and Gas Simultaneous Filing Procedures

Several States have reported that they have received simultaneous oil and gas lease entry cards which were obviously xeroxed, duplicated, or facsimile copies of Form 3112-1 (May 1974). Requests have also been received in this office and in the State offices for permission to reproduce Form 3112-1.

Oil and gas lease offers filed under the simultaneous oil and gas leasing procedures must be submitted on the official entry card (Form 3112-1) provided by this Bureau. Requests for reproduction of the form are to be denied and offers filed on copies or facsimiles of that form will not be accepted. Furthermore, the Department's use of entry card Form 3112-1 with prepaid postage was expressly authorized by the U.S. Postal Service and any reproduction thereof may be considered a violation of the postal regulations promulgated under Title 18, U.S. Code, section 501.

The April notice of lands available for oil and gas leasing shall include a statement informing prospective offerors that reproduction of the franked postal entry card is not authorized and will not be accepted for inclusion in the drawing. (Emphasis supplied.)

The case at bar arose from a filing made prior to March 26, 1975, when BLM offices were accepting unofficial copies of Form 3112-1 in the simultaneous filings. Indeed, appellant states that he was instructed by a BLM employee to reproduce copies of the form to accommodate his situation. While it is axiomatic that the Government is not bound by unauthorized pronouncements by its employees, it does appear that privately reproduced lease entry cards were generally acceptable to BLM and leases may have been issued in response to some of them.

[1] Where the Bureau of Land Management changes an administrative practice to refuse to accept unofficial copies of a filing form, the new practice is to be given prospective application only. Filings made on unofficial copies of Form 3112-1 prior to the April 1975 simultaneous filing period will not be disturbed on that basis. Cf. Franco Western Oil Co., 65 I.D. 427 (1958).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and the case remanded to BLM for further appropriate action not inconsistent herewith.

Douglas E. Henriques  
Administrative Judge

We concur:

Newton Frishberg  
Chief Administrative Judge

Frederick Fishman  
Administrative Judge

